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Before the
Federal Communications Commission
Washington, DC 20554

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JUN 1 9 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Petitions for Postponement of	)	Public Notice
Initial Filing Window for Two-Way	)	DA 00-1256
Multipoint Distribution Service	)	
And Instructional Television	)	Released June 12, 2000
Fixed Service	)	

COMMENTS OF THE ITFS SPECTRUM DEVELOPMENT ALLIANCE IN SUPPORT OF POSTPONEMENT OF MDS/ITFS FILING WINDOW

The ITFS Spectrum Development Alliance hereby respectfully files its comments on the petitions requesting postponement of the July 3 through July 10 filing window for Multipoint Distribution Service ("MDS") and Instructional Television Fixed Service ("ITFS") applications for two-way operations filed on June 6, 2000 by ITFS 2020 and on June 7, 2000 by the Association of Federal Communications Consulting Engineers. The Alliance strongly supports a modest 90 - 120 day postponement of the filing window.

The Alliance is a non-profit organization formed to provide ITFS licensees and its members with the full range of technical and business support needed to convert successfully to digital two-way operation. Two-way operation holds the potential for broad educational benefits, including wireless internet access and other interactive applications. The Alliance's members include seven non-profit educational organizations, which hold ITFS licenses enabling them to serve almost 100 communities throughout the United States. The Alliance's founding members include the North American Catholic Educational Programming Foundation, the Hispanic Information & Telecommunications Network, and the Instructional Telecommunications Foundation, Inc. Each of the Alliance's members also individually supports the positions of the Alliance set forth herein.

The Alliance's members, which are among the largest ITFS entities in the country, have, since the announcement of the initial filing window on March 23, 2000, diligently pursued the preparation of two-way applications for filing in the window. These members expect to be able to file at least some two-way applications in the window, even if it is not postponed. Many smaller ITFS licensees, however, will not be so fortunate. Moreover, for the reasons set forth herein, the Alliance and its members believe that a 90 - 120 day postponement would serve the public interest.

Grant of the requested 90-120 day postponement (i) would give all parties the full benefit of the originally contemplated period for the preparation of two-way applications; (ii) would serve the goal of administrative efficiency and smooth the transition to two-way operation by permitting the maximum number of two-way applicants to utilize the special dispute resolution and coordination processes built into the initial filing window; and (iii) will substantially decrease the number of disputes and petitions to deny which will inevitably result from rushed filings using limited tools in a compressed time frame. In order to produce these benefits and avoid these detriments, however, the Alliance believes that at least 90 additional days must be provided. Because a lesser extension will not appreciably alleviate the pressures on ITFS licensees, the Alliance would prefer to either obtain an extension of at least 90 days or proceed with the current window and focus its energies and resources on preparing for the next filing window available after the 120 day period following the initial window has elapsed.

The following comments and considerations are supported by the experiences of the Alliance's members, the declaration (attached as Exhibit A) of Robert Gehman, PE, an engineer with over 30 years experience, including substantial experience engineering ITFS and MMDS facilities, and the comments of participants in a nationwide audio conference on software and engineering issues sponsored by the National ITFS Association ("NIA") on June 14, 2000. A summary of critical consensus points derived from the discussions on June 14 is provided at the end of these comments. A transcript of the entire forum is attached as Exhibit B.

Due to Software Problems and Limited Engineering Resources, the Commission's Originally Contemplated Application Preparation Period Has Been Drastically Reduced, to the Particular Detriment of ITFS Licensees

The requested extension is necessitated by developments which were not foreseen by the Commission when it announced the filing window. The original filing window was announced on March 23, 2000, and thus contemplated almost four full months for the preparation of two-way applications. Final technical specifications for interference analyses were not, however, released until April 27, 2000.[1/] The studies contemplated by these specifications are among the most complex ever required by the Commission, if not the most complex.[2/] Fully functional versions of engineering software needed to conduct these studies was not available until early June, and even now these tools are undocumented, buggy, and difficult to use. In essence, the four month period has been reduced to 30 days at most, and arguably less. Most critically, based upon comments at the NIA audio forum, established engineering firms are fully booked and not accepting new work, even though the July 10 deadline was over three weeks away at the time of the forum.

Because of these limitations on available two-way system engineering software, and on available engineering resources (all interested parties are vying for the same limited pool of professional engineers to submit applications), ITFS entities, including the Alliance's members, face great difficulties in completing the engineering studies required to be submitted in the filing window by the current deadline of July 10 for many of the markets they wish to convert to two-way operations. As the Commission has consistently recognized, as non-profit educational institutions, these entities face far greater resource constraints than the large commercial operators. Adherence to the originally planned window deadline will disproportionately and adversely affect them.

More fundamentally, the limitations on engineering resources available to assist parties filing in the initial window, as well as the questions surrounding the usability and reliability of

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1/ See Gehman Declaration ¶ 5.

2/ See Gehman Declaration ¶ 4.

available engineering software, present very serious risks that the engineering studies which serve as the basis for two-way proposals submitted during the initial filing window will contain serious errors. These errors could result from the software itself, or from incorrect use of it due to the limited opportunities to learn its capabilities or verify its results. Such errors increase the chances of harmful interference, and the likelihood of disputes between licensees resulting in petitions to deny, which in the end will delay the transition to two-way operation, not expedite it. The presence of errors in these filings could also have draconian consequences for licensees even where disputes do not initially result. Parties filing in the initial window who rely upon grants and construct two-way facilities are nonetheless subject to the requirement of immediate cessation of operations if interference results from their operations, and the possibility of revocation of licenses for two-way operations in the event that their filings are found after the fact to contain "material errors."[3/]

Applicants' Inability To Participate in the Initial Filing Window Is Not a Case of "No Harm, No Foul"

The Commission would be wrong to conclude that the July 3 - July 10 filing window is a mere "initial" filing window, so that if parties miss the window, or are unable to submit two-way proposals for all of the markets where they plan two-way operation, they will not be significantly prejudiced. As the Commission's two-way orders recognize, the initial filing window is a crucial step in the transition to widespread two-way operation.

Parties able to file in this window will achieve significant advantages in their efforts to convert their facilities to two-way operation, since subsequent filers will be required to engineer their two-way facilities around these previously filed systems. Because ITFS entities have far fewer resources for coping with the many difficulties described in the initial petitions, and these

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[3/] See Amendment of Parts 1, 21 and 74 to Enable Multipoint Distribution Service and Instructional Television Fixed Service licensees to Engage in Fixed Two-way Transmissions, *Report and Order on Reconsideration,* 14 FCC Rcd 12,764 ¶ 11 (1999).

comments, than do the large commercial operators, refusal to postpone the filing deadline will give this advantage disproportionately to large commercial operators.

The initial filing window also has special dispute resolution procedures allowing parties to resolve interference issues between two-way systems which will not be available in subsequent one day filing windows. Specifically, the Commission's initial filing window procedures provide for a 60 day period during which parties filing in the initial window can study other two-way proposals for the same market and negotiate technical solutions permitting the coexistence of compatible, interference-free two-way operations. For parties filing in the initial window, these negotiations will be undertaken from a position of parity, since each party is equally obligated to resolve disputes in order to permit processing of their applications. The Alliance respectfully submits that it serves the interests of administrative efficiency, as well as the public interest, to have as many two-way proposals filed in the initial window to take advantage of these procedures to resolve technical issues without the necessity of filing petitions to deny.

The Unavailability of Engineering Resources Means Parties Will Not Be Able To Evaluate Requests for Interference Consents for Proposals in the Window, Seriously Hindering System Design

Software limitations and the limitations on engineering resources available in the remaining period before July 10 will also have another important, unforeseen negative consequence for the Commission's hoped-for smooth transition to two-way operations. The Commission's ITFS and MDS interference coordination rules have always granted an important role to consents by licensees which accept otherwise impermissible interference. Such consents can be used in lieu of demonstrating full interference protection, and licensees are expected to give reasonable consideration to such consent requests. ITFS licensees are now receiving significant numbers of requests for consent to interference in connection with two-way proposals being prepared for filing in the initial window. Given the limitations on available engineering resources, ITFS licensees are not in a position to properly evaluate such requests to determine the

extent of harm to their operations which these requests might pose. Some, or even many, of these requests may in fact be acceptable from an ITFS operator's point of view, but no operator can prudently grant such a consent without a full engineering evaluation. Moreover, if parties whose consent is sought have been unable to complete the engineering of their own two-way systems, they will have no basis upon which to evaluate the potential for interference to these systems.

Forced adherence to the current filing window will therefore result in loss of the benefits in system design which might otherwise be obtained by the granting of reasonable consents. On the other side, parties engineering two-way facilities (including ITFS licensees) who are unable to obtain consents are more limited in their engineering choices than they otherwise would be, and may be forced to engineer their systems with a greater margin of error, and less robust coverage, than they would be if adequate time were given to consider consents.

Summary of NIA Audio Forum

In light of the two petitions for extension of the filing window, NIA hosted a forum to discuss the operational status of software programs that were developed to assist parties in preparing and evaluating two-way ITFS and MMDS applications. The following are what the Alliance believes to be undisputed facts revealed by the well-attended, national forum:

1. To the knowledge of the participants who addressed the issue, all qualified consulting engineering firms are now fully "booked" through the conclusion of the July filing window.[4/] They are now turning down work and are unable to refer prospective clients elsewhere.[5/]

2. Working versions of CelPlan and EDX software for performing ITFS/MMDS studies were not released until early June, 2000.[6/] Prior versions were considered "alpha" or

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4/ Transcript of NIA Software Readiness Forum (June 14, 2000) ("NIA Transcript") at 14-15, 55.

5/ NIA Transcript at 43, 52-56, 58.

6/ NIA Transcript at 30-31, 34.

"beta" software.[7/] Prior versions made errors in computation, requiring re-work of interference studies (or, if the needed re-work was not performed, producing incorrect study results).[8/]

3. The CelPlan software is complex, and requires engineers to made technical assumptions in the form of "settings" selected in using the software.[9/] As a result, it is possible for two studies of the same interference environment to produce two different results.[10/] It is possible for one study to show no impermissible interference, whereas a second would, with both studies based upon reasonable, but somewhat differing, technical assumptions.[11/]

4. No written "documentation" (i.e. user manuals) is available for the CelPlan or EDX software used to prepare ITFS/MMDS studies.[12/] There is no "help" function to guide users. Training seminars have been held and telephone support is available through the manufacturers.[13/]

5. Because of the immense numbers of calculations it performs, the software runs slowly, especially if the interference studies are complex.[14/] It can take as much as 30 hours to run a single study, and the results of such a study can lead to further studies' being required.[15/]

6. Certain important functions have not yet been fully automated in CelPlan.

A. The software outputs study data in the format required by Appendix D of the Commission's two-way rules. However, neither CelPlan nor EDX read this data from the diskettes, requiring manual entry or manual "cutting and pasting" of data.[16/] Input of such data into EDX or CelPlan is

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7/ NIA Transcript at 30.

8/ NIA Transcript at 20-22, 29-30.

9/ NIA Transcript at 46-47; see also Gehman Declaration ¶ 4.

10/ NIA Transcript at 23-24, 26, 38, 45-46, 79.

11/ Id.

12/ NIA Transcript at 16, 47; see also Gehman Declaration ¶ 6.

13/ NIA Transcript at 67.

14/ NIA Transcript at 9, 35-36, 41.

15/ NIA Transcript at 59-61.

16/ NIA Transcript at 44, 48-50; see also Gehman Declaration ¶ 10.

essential for ITFS licensees' engineers to assess the extent of interference in connection with a requested interference consent, or in studying a proposed application.

B. The "limited exception" standard, which is commonly employed in interference studies between systems with overlapping PSAs, is not fully automated.[17/]

7. The participating engineers stated that they had insufficient hands-on experience to properly assess the ability of CelPlan and EDX to interoperate. The EDX engineer stated that some files produced by CelPlan software had been run on EDX software, with inaccurate results.[18/]

[17/] NIA Transcript at 10-13, 70-71.

[18/] NIA Transcript at 38-40.

CONCLUSION

For the foregoing reasons, the Alliance requests that the Commission grant its requested postponement of the initial filing window.

Respectfully submitted,

THE ITFS SPECTRUM DEVELOPMENT ALLIANCE

By: _____

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June 19, 2000

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COMMENTS OF THE ITFS SPECTRUM DEVELOPMENT ALLIANCE IN SUPPORT OF POSTPONEMENT OF MDS/ITFS FILING WINDOW

EXHIBIT A

DECLARATION OF ROBERT GEHMAN, JR. P.E.

DECLARATION OF ROBERT GEHMAN, JR., P. E.

I, Robert Gehman, Jr., hereby declare as follows:

1. I am over 18 years of age and competent to make this declaration.

2. I am a professional engineer registered in the states of Florida, Maryland, and Mississippi. I am president of Kessler and Gehman Associates, Inc., telecommunications consulting engineers. My qualifications are a matter of record with the Federal Communications Commission having been presented on numerous occasions during the past 30 years. Kessler and Gehman Associates has provided engineering services to applicants for, and licensees of, stations in the Instructional Television Fixed Service ("ITFS") and in the Multipoint Distribution Service ("MDS") since 1967.

3. The ITFS Spectrum Development Alliance ("Alliance") is composed chiefly of Information Telecommunications Foundation, Inc., Hispanic Information and Telecommunications Network, Inc., and North American Catholic Educational Programming Foundation, Inc. Kessler and Gehman Associates received inquiries from members of the Alliance in connection with providing engineering services related to the preparation of applications for two-way licenses in the ITFS and MDS services and/or to evaluate the affects of other two-way filings on facilities owned by the members.

4. A reasonable delay in the FCC MMDS/ITFS two-way Filing Window best serves the interest of MDS and ITFS licensees for the reasons described below. The FCC announced the opening of the Initial Filing Window for two-way on March 23, 2000. This represents an advance notice of about 110 days for the design of two-way systems to protect incumbent stations and for the preparation of applications meeting some of the most stringent filing requirements of my 35 years in dealing with the FCC. The software required to design the stations and generate the data file required for the application was not ready until the first week of June resulting in an effective

reduction of the FCC announcement of the Initial Filing Window to only about 30 days.

5. There is insufficient time to become proficient in the use of the software, to conduct reasonable two-way designs, and also prepare certifiable applications by the filing deadline. The final FCC Methodology[1] was not issued until the end of April 2000. As a result, stable engineering software has only been available since the first week in June of this year, leaving only 30 days until the window opening. The software was available for purchase in May, however, repeated software updates have hampered its use and caused much of the initial work to be rerun. Some revisions caused complete software failures due to interoperability issues with other modules of the program. For example, updates of CelPlan's[2] CelFCC module became incompatible with the existing operating version of the CelPlaner program until a new compatible vision of CelPlaner was delivered and loaded resulting in lost time.

6. No documentation manuals or help screens are available for the CelFCC MMDS/ITFS two-way module. This has significantly lengthened the learning curve timeframe to effectively operate the tool. We have recently learned documentation may not be available until December of this year, well after the current July Filing Window. Therefore, the only option available to us to resolve software problems is primarily through e-mail and some telephone correspondence within CelPlan's availability. Answers are not always clear and crisp, often resulting in more questions than answers further exacerbating the problem. Some questions have not been answered for several hours adding to the slow learning and problem resolution process.

7. We have attended all training classes available to learn how to operate this very complex software program. Nevertheless, operation of the software has been difficult

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[1] "Methods for Predicting Interference from Response Station Transmitters and to Response Station Hubs and for Supplying Data on Response Station Systems", Version 1.29 dated April 21, 2000, also known as "Appendix D".

[2] CelPlan Technologies, Inc. and EDX, Inc. are the only known producers of computer programs commercial available to meet the design and filing requirements FCC's Appendix D.

at best due to the large number of variables that can be entered that can alter the results. The three-day training seminar provided a general overview of the software, but it was not sufficient to begin actual design work. Little time was spent explaining the intricacies of the many settings that have the possibility of generating erroneous results. Neither was any time taken to explain the interrelationships between the many input and output files

8. Old data from previous studies is not always overwritten by new data during the iterative analysis process of preparing an application. Therefore, confidence is lost on the results unless the old file is cleared before new data is entered. This also slows the market development process.

9. We were notified that the June 2, 2000 revision would be the last until the end of the filing window. The June 2 revision resulted in lines being displayed randomly on the screen when a particular software function was invoked, so some software problems were still present after the June 2 freeze. The revision to correct the problem arrived four days later. During that time we had no choice but to proceed with caution and question all results produced by the tool, wondering what, if anything was correct.

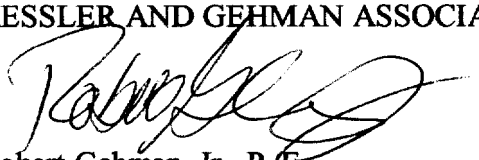
10. No module currently exists to load an Appendix D file from another operator's study. Therefore, we must either cut and paste or key-in entries into our database for confirmation assessment. This will result in many additional hours to evaluate the affects of a two-way filing in an adjacent market.

11. The design process is basically one of try-and-revise. It is difficult to forecast the locations and degree of interference from hundreds of response stations to thousands of study point in an incumbent's protected service area. Reasonably small studies with limited frequencies to analyze generally take a few hours to run. Some seem to work and others are questionable. If we study several or all frequencies in a market at one time, the run time will increase accordingly to perhaps more than a day. If errors occur, all that time is lost and another study must be conducted once the errors are resolved. Until confidence is achieved through routine accurate results, too much precious time is at risk to try lengthy complex analyses.

12. With limited experience with the software, two weeks at best in spite of numerous problems, there is no intuitive ability to question the accuracy of the study results. Therefore, some manual confirmation of the results should be performed to develop confidence in the accuracy of the end product. We have not yet achieved confidence in simple tasks. Therefore, how can we have confidence in more complex projects?

I declare under penalty of perjury that the above statements are true and correct to the best of my knowledge and belief.

KESSLER AND GEHMAN ASSOCIATES, INC.



Robert Gehman, Jr., P.E.
President

Date: June 15, 2000

COMMENTS OF THE ITFS SPECTRUM DEVELOPMENT ALLIANCE IN SUPPORT OF POSTPONEMENT OF MDS/ITFS FILING WINDOW

EXHIBIT B

TRANSCRIPT OF NATIONAL ITFS ASSOCIATION SOFTWARE READINESS FORUM -- JUNE 14, 2000

COMMENTS OF THE ITFS SPECTRUM DEVELOPMENT ALLIANCE IN SUPPORT OF POSTPONEMENT OF MDS/ITFS FILING WINDOW

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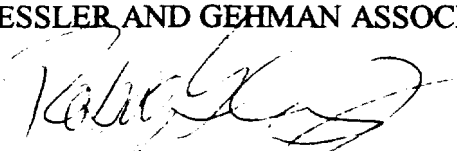

Robert Gehman, Jr., P.E.
President

Date: June 15, 2000

COMMENTS OF THE ITFS SPECTRUM DEVELOPMENT ALLIANCE IN SUPPORT OF POSTPONEMENT OF MDS/ITFS FILING WINDOW

EXHIBIT B

TRANSCRIPT OF NATIONAL ITFS ASSOCIATION SOFTWARE READINESS FORUM -- JUNE 14, 2000

NATIONAL ITFS ASSOCIATION

AUDIO CONFERENCE FORUM ON

SOFTWARE READINESS

Wednesday
June 14, 2000

P R O C E E D I N G S

(2:00 p.m.)

ANNOUNCEMENT: This is a recording of today's Pike's Peak Community College Conference call taking place on June 14th, Year 2000, at 2:00 Central time. The conference title is Software Readiness, and the speaker today is Mr. John Schwartz.

OPERATOR: Good day, everyone, and welcome to the Software Readiness conference call. Just a reminder, today's call is being recorded. For opening remarks and introductions, I would like to turn the call over to Mr. Todd Gray. Please go ahead, sir.

MR. GRAY: Thank, Operator. Hello, I'm Todd Gray, of Dow, Lohnes & Albertson in Washington, D.C. I am Legal Counsel to the National ITFS Association.

On behalf of the NIA, I want to welcome both our presenters and our audience to this audio conference. I want to particularly thank the Moderator and the presenters for their time and effort in making this happen on short notice. Also, a special thanks to Fay Cover and Michael Singles at Pike's Peak Community College, Chuck Jones at Tiltrack (phonetic), and Don MacCullough, NIA's Executive Director, for making this possible.

This audio conference was organized by NIA to help

the ITFS community understand certain issues raised by requests submitted recently to the FCC for an extension of the first two-way filing window. The window is currently scheduled to take place between July 3 and July 10, 2000.

Two parties have filed petitions seeking to extend the filing window. ITFS 20/20 seeks a nine-month extension. The Association of Federal Communications Consulting Engineers seeks a 130-day extension, or a little over four months.

The NIA has been in agreement with having the filing window in July. This was the position taken during a meeting of its Board of Directors in February. We understand that the NIA's concurrence with the timing of the window was a significant factor in the FCC's decision to open the window in July, and we have greatly appreciated the FCC's respect for an accommodation of the Association's views.

When the petitions for extension were filed, the NIA Board met to consider how to respond. The Board has not yet made any determination to change its previous position in support of a July window. However, in the course of its discussions, it became apparent that more information would be useful to evaluate two of the issues raised by the petitions because the Board heard conflicting facts about

these issues.

One issue is the operational status of the engineering software programs that were developed to assist parties in preparing and evaluating two-way ITFS and MMDS application. This is the topic of today's audio conference.

The second issue is the preclusion issues, whether an ITFS licensee that does not file during the first two-way window is likely to be disadvantaged in converting to two-way operations in the future. That is the topic of tomorrow's audio conference, which will begin at noon Eastern time.

It's important at the outset of these discussions to emphasize one very important point, in order to avoid any misunderstanding of the issues relevant to the timing of the first window. These two audio conferences are going to focus on two issues only, the software issue and the preclusion issue. We're limiting these discussions to those two topics because they were the ones that seemed to be -- where there seemed to be significant differences of fact and opinion.

But these forums are not intended to be a comprehensive debate on whether there should be an extension, and these two issues are not the only important issues that we believe you should consider in determining